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GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
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COMMISSIONER
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DIRECTOR

BOARD OF PESTICIDES CONTROL

March 28, 2008

John E. Dority Safety & Performance Training Center (Conference Room, Lower Level)
10 Mountain Avenue (off Route 201 going toward Skowhegan), Fairfield
(Exit 133 from I-95)

AGENDA

9:30 AM

1. Introductions of Board and Staff
2. Minutes of the February 29, 2008, Board Meeting

Presentation By: Henry Jennings
Director

Action Needed: Amend and/or approve

3. Gowan Company Request for a 24(c) Registration for Use of Nexter Miticide/Insecticide on Greenhouse Tomatoes

Gowan Company is requesting a Special Local Needs [24(c)] Registration to allow for the use of Nexter Miticide/Insecticide (active ingredient pyridaben) on greenhouse tomatoes. Nexter is currently registered for use on several food crops and EPA has established a tolerance on tomatoes of 0.15 ppm. There are current 24(c) labels in effect for greenhouse tomatoes in Texas, Arizona and Pennsylvania. Nexter is the product of choice for Backyard Farms in Madison because it provides effective control of whiteflies and mites with minimal impact on their aggressive biological pest control program.

Presentation By: Wesley Smith
Pesticides Registrar

Action Needed: Approve/Disapprove 24(c) Registration

4. Final Adoption of Major Substantive Rule Amendments, Chapter 26 and Chapter 29, Section 6

At its January 25, 2008, meeting, the Board provisionally adopted major substantive amendments to Chapter 26 and Chapter 29, Section 6. The Joint Standing Committee on Agriculture,

Conservation and Forestry held a public hearing and workshop on those amendments on February 25, 2008. Subsequently, the Committee voted both amendments out as ought-to-pass without changes. The Legislature enacted both Resolves and the Governor signed them into law on March 17, 2008. The Board will now decide whether to finally adopt the amendments.

Presentation by: Henry Jennings
Director

Action Needed: Final Adoption of Major Substantive Amendments

5. Consideration of Applications From Monsanto Ag Products to Register Yieldgard VT Rootworm/RR2 and Yieldgard VT Triple

During 2007, and after a lengthy review process, the Board approved the registrations of ten Bt field corn products. The staff automatically renewed any 2008 registration requests for the same products or products containing the same genetic events, but agreed to first review any Bt field corn registration requests that involve a different genetic event. Monsanto Ag Products has submitted registration requests for two such products. Staff toxicologist Lebel Hicks has reviewed the two new products and concluded the risks are comparable to the previously registered products.

Presentation By: Lebel Hicks
Pesticides Toxicologist

Action Needed: Approve/Disapprove Product Registration Requests

6. Continued Discussion About Approaches to Address Public Concerns About Aerial Spraying

The Board held a Public Information Gathering Meeting on aerial spraying and spray drift at its December 2007 meeting, and then discussed issues and ideas at its January and February 2008 meetings. During the February meeting, the Board directed the staff to develop some concepts relating to detailed site plans and identification of sensitive areas. The Board will now review the staff concepts and continue its discussion about aerial spraying and drift.

Presentation By: Henry Jennings
Director

Action Needed: Provide feedback to the staff about the concepts presented and determine the next steps

7. Adoption of Board Policy Clarifying the Definitions of Spray Contracting Firm

The Board's statutes and rules both contain definitions for "spray contracting firm," with the definition in rule containing slightly more detail. Both definitions can be interpreted broadly to include anyone who enters into a contract to provide a broad range of services including pest control, even if the pest control services are subcontracted. At the February 29, 2008, Board meeting, the staff presented a memo outlining Board options to institute a more logical public

policy which would exclude general contractors unless they maintain control of pesticide application decisions. Following discussion at the meeting, the Board directed the staff to draw up a policy and bring it back for consideration at the next meeting. The Board will now review the proposed policy and consider its adoption.

Presentation By: Gary Fish
Manager of Pesticide Programs

Action Needed Review the proposed policy and consider adoption

8. Discussion of Criteria for Variances to Chapter 29, Section 6

Chapter 29, Section 6, requires an untreated 25-foot buffer zone for outdoor terrestrial broadcast pesticide applications near surface waters, including lakes, ponds, rivers, streams, certain wetlands and estuarine/marine waters. This section also contains a mechanism under which the Board or its staff can grant variances. With two requests already received and others expected, the staff is seeking guidance for determining under what circumstances variances should be granted.

Presentation By: Henry Jennings
Director

Action Needed Provide guidance to staff for granting variances to the buffer requirement

9. Consideration of Staff Negotiated Consent Agreement with TruGreen Chemlawn, Inc., of Westbrook

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the failure to notify an individual listed on the 2007 Pesticide Notification Registry who was within 250 feet of an application.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

10. Consideration of Staff Negotiated Consent Agreement with Purely Organics of York Harbor

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved custom application of

pesticides by an unlicensed applicator and for making pesticidal claims for the sale and application of an unregistered vinegar product.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

11. Consideration of Staff Negotiated Consent Agreement with Service Master of Saco

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the custom application of mold remediation products by an unlicensed company.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

12. Consideration of Staff Negotiated Consent Agreement with David Register of Lisbon

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involved the custom application of bleach to control mold in a rented residential unit by an unlicensed applicator.

Presentation By: Raymond Connors
Manager of Compliance

Action Needed: Approve/disapprove the consent agreement negotiated by staff

13. Other Old or New Business

- a. Update on Replacement for Lee Humphreys—H. Jennings
- b. Continuing Discussion of Pesticide Use Data—H. Jennings
- c. YardScaping Update—G. Fish
- d. Other ?

14. Schedule and Location of Future Meetings

May 2, June 13, and July 25, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

Adjustments and/or Additional Dates?

15. Adjourn

NOTES

- The Board Meeting Agenda and most supporting documents are posted one week before the meeting on the Board website at www.thinkfirstspraylast.org.
- Any person wishing to receive notices and agendas for meetings of the Board, Medical Advisory Committee, or Environmental Risk Advisory Committee must submit a request in writing to the Board's office. Any person with technical expertise who would like to volunteer for service on either committee is invited to submit their resume for future consideration.
- On November 16, 2007, the Board adopted the following policy for submission and distribution of comments and information when conducting routine business (product registration, variances, enforcement actions, etc.):
 - *For regular, non-rulemaking business*, the Board will accept pesticide-related letters, reports, and articles. Reports and articles must be from peer-reviewed journals. E-mail, hard copy, or fax should be sent to the attention of Paul Schlein, Public Information Officer, at the Board's office. In order for the Board to receive this information in time for distribution and consideration at its next meeting, all communications must be received by 8:00 AM, three days prior to the Board meeting date (e.g., if the meeting is on a Friday, the deadline would be Tuesday at 8:00 AM). Any information received after the deadline will be held over for the next meeting.
- During rulemaking, when proposing new or amending old regulations, the Board is subject to the requirements of the APA (Administrative Procedures Act), and comments must be taken according to the rules established by the Legislature.